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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Albania, Andorra, Argentina, Armenia, Austria, Belgium, Benin, Bosnia and Herzegovina, Bulgaria, Chile, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Guatemala, Hungary, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Monaco, Montenegro, Netherlands, Norway, Panama, Peru, Poland, Portugal, Republic of Moldova, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia and United Kingdom of Great Britain and Northern Ireland: draft resolution

Human rights in the administration of justice

The General Assembly,

Bearing in mind the principles embodied in articles 3, 5, 8, 9 and 10 of the Universal Declaration of Human Rights[1] and the relevant provisions of the International Covenant on Civil and Political Rights and the Optional Protocols thereto,[2] in particular articles 6, 7, 9 and 10 of the Covenant, the Convention on the Rights of the Child,[3] in particular articles 37, 39 and 40, and the International Covenant on Economic, Social and Cultural Rights,[4] as well as all other relevant international treaties,

Calling attention to the numerous international standards in the field of the administration of justice,

Recalling all the resolutions of the General Assembly, the Human Rights Council, the Commission on Human Rights and the Economic and Social Council that are relevant to the subject of human rights in the administration of justice, including General Assembly resolutions 62/158 of 18 December 2007 and 65/213 of

[1] Resolution 217 A (III).
[2] See resolution 2200 A (XXI), annex, and resolution 44/128, annex.
[3] United Nations, *Treaty Series*, vol. 1577, No. 27531.
[4] See resolution 2200 A (XXI), annex.

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21 December 2010, and Human Rights Council resolutions 10/2 of 25 March 2009[5] and 18/12 of 29 September 2011,[6]

Welcoming General Assembly resolution 67/1 of 24 September 2012 entitled "Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels",

Welcoming also the entry into force of the International Convention for the Protection of All Persons from Enforced Disappearance,[7] and encouraging all States that have not done so to consider signing, ratifying or acceding to the Convention,

Welcoming further the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules),[8]

Welcoming the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems,[9]

Taking note of general comments No. 21, on the humane treatment of prisoners deprived of their liberty, and No. 32, on the right to equality before courts and tribunals and to a fair trial, and general comments No. 10, on children's rights in juvenile justice, and No. 13, on the rights of the child to freedom from all forms of violence, adopted by the Committee on the Rights of the Child,

Noting with appreciation the important work in the field of the administration of justice of the United Nations Office on Drugs and Crime, the Office of the United Nations High Commissioner for Human Rights, the United Nations Development Programme, the United Nations Children's Fund, the Department of Peacekeeping Operations of the Secretariat and the United Nations Entity for Gender Equality and the Empowerment of Women as well as the Special Representative of the Secretary-General on Violence against Children and the Special Representative of the Secretary-General on Children and Armed Conflict,

Noting with satisfaction the work of the Interagency Panel on Juvenile Justice and of its members, in particular their coordination in providing technical advice and assistance in juvenile justice, and the active participation of civil society in their respective work,

Convinced that the independence and impartiality of the judiciary and the integrity of the judicial system as well as an independent legal profession are essential prerequisites for the protection of human rights, the rule of law, good governance and democracy, as well as for ensuring that there is no discrimination in the administration of justice, and should therefore be respected in all circumstances,

Recalling that every State should provide an effective framework of remedies to redress human rights grievances or violations,

Emphasizing that the right to access to justice for all forms an important basis for strengthening the rule of law through the administration of justice,

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[5] See *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 53* (A/64/53), chap. II, sect. A.

[6] Ibid., *Sixty-sixth Session, Supplement No. 53A* (A/66/53/Add.1), chap. II.

[7] Resolution 61/177, annex.

[8] Resolution 65/229, annex.

[9] See *Official Records of the Economic and Social Council, 2012, Supplement No. 10* (E/2012/30), chap. I.A.

Mindful of the importance of ensuring respect for the rule of law and human rights in the administration of justice as a crucial contribution to building peace and justice and ending impunity,

Recognizing the importance of the principle that persons deprived of their liberty shall retain their non-derogable human rights and all other human rights and fundamental freedoms, except for those lawful limitations that are demonstrably necessitated by the fact of incarceration,

Recalling that the social rehabilitation of persons deprived of their liberty shall be among the essential aims of the criminal justice system, ensuring, as far as possible, that offenders are able to lead a law-abiding and self-supporting life upon their return to society,

Aware of the need for special vigilance with regard to the specific situation of children, juveniles and women in the administration of justice, in particular while they are deprived of their liberty, and their vulnerability to various forms of violence, abuse, injustice and humiliation,

Recognizing the specific needs of children formerly associated with armed forces or armed groups, and noting that these children, when accused of crimes under international law allegedly committed while associated with armed forces or armed groups, should be considered primarily as victims and not only as perpetrators,

Reaffirming that the best interests of the child shall be a primary consideration in all decisions concerning the child in the administration of justice, including in relation to pretrial measures, as well as being an important consideration in all matters concerning the child related to sentencing of his or her parents, or, where applicable, legal guardians or primary caregivers,

1. *Welcomes* the most recent report submitted by the Secretary-General to the General Assembly on human rights in the administration of justice;[10]

2. *Also welcomes* the most recent report of the United Nations High Commissioner for Human Rights on the protection of human rights of juveniles deprived of their liberty[11] as well as the joint report of the Office of the United Nations High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system,[12] both submitted to the Human Rights Council;

3. *Reaffirms* the importance of the full and effective implementation of all United Nations standards on human rights in the administration of justice;

4. *Reiterates its call* to all Member States to spare no effort in providing for effective legislative and other mechanisms and procedures, as well as adequate resources, to ensure the full implementation of those standards;

5. *Invites* States to make use of technical assistance offered by the relevant United Nations entities and programmes in order to strengthen national capacities and infrastructures in the field of the administration of justice;

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[10] A/67/260.

[11] A/HRC/21/26.

[12] A/HRC/21/25.

6. *Appeals* to Governments to include in their national development plans the administration of justice as an integral part of the development process and to allocate adequate resources for the provision of legal aid services with a view to promoting and protecting human rights, and invites the international community to respond favourably to requests for financial and technical assistance for the enhancement and strengthening of the administration of justice;

7. *Stresses* the special need for national capacity-building in the field of the administration of justice, in particular through reform of the judiciary, the police and the penal system, as well as juvenile justice reform, in order to establish and maintain stable societies and the rule of law in post-conflict situations, and in this context welcomes the role of the Office of the United Nations High Commissioner for Human Rights in supporting the establishment and functioning of transitional justice mechanisms in post-conflict situations;

8. *Affirms* that States must ensure that any measure taken to combat terrorism, including in the administration of justice, complies with their obligations under international law, in particular international human rights, refugee and humanitarian law;

9. *Notes* the work of the open-ended intergovernmental expert group to exchange information on best practices, as well as on national legislation and existing international law, and on the revision of existing United Nations standard minimum rules for the treatment of prisoners so that they reflect recent advances in correctional science and best practices, with a view to reporting on its progress to the Commission on Crime Prevention and Criminal Justice at its twenty-second session, and in this regard invites the expert group to benefit from the expertise of the United Nations Office on Drugs and Crime and of the Office of the United Nations High Commissioner for Human Rights and other relevant stakeholders;

10. *Recalls* the absolute prohibition of torture in international law, and calls upon States to address and prevent the detention conditions, treatment and punishment of persons deprived of their liberty that amount to cruel, inhuman or degrading treatment or punishment;

11. *Urges* States to endeavour to reduce, where appropriate, pretrial detention, inter alia, by adopting legislative and administrative measures and policies on its preconditions, limitations, duration and alternatives and by taking measures aimed at the implementation of existing legislation, as well as by ensuring access to justice and legal advice and assistance;

12. *Encourages* States to address overcrowding in detention facilities by taking effective measures, including through enhancing the use of alternatives to pretrial detention and custodial sentences where possible, access to legal aid and the efficiency as well as the capacity of the criminal justice system and its facilities;

13. *Continues to encourage* States to pay due attention to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)[8] when developing and implementing relevant legislation, procedures, policies and action plans, and invites relevant special procedure mandate holders, the Office of the United Nations High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and all other relevant organizations to take these rules into consideration in their activities;

14. *Recognizes* that every child and juvenile in conflict with the law must be treated in a manner consistent with his or her rights, dignity and needs, in accordance with international law, bearing in mind relevant international standards on human rights in the administration of justice, and calls upon States parties to the Convention on the Rights of the Child to abide strictly by its principles and provisions;

15. *Encourages* States that have not yet integrated children's issues into their overall rule of law efforts to do so, and to develop and implement a comprehensive juvenile justice policy to prevent and address juvenile delinquency, as well as with a view to promoting, inter alia, the use of alternative measures, such as diversion and restorative justice, and complying with the principle that deprivation of liberty of children should be used only as a measure of last resort and for the shortest appropriate period of time, as well as to avoid, wherever possible, the use of pretrial detention for children;

16. *Stresses* the importance of including reintegration strategies for former child offenders in juvenile justice policies, in particular through education programmes, with a view to their assuming a constructive role in society;

17. *Urges* States to take all necessary and effective measures, including legal reform where appropriate, to prevent and respond to all forms of violence against children within the justice system;

18. *Also urges* States to ensure that, under their legislation and practice, neither capital punishment nor life imprisonment without the possibility of release, nor corporal punishment as a sentence or as a disciplinary measure, is imposed for offences committed by persons under 18 years of age, and invites States to consider repealing life imprisonment with the possibility of release for offences committed by persons under 18 years of age;

19. *Encourages* States not to set the minimum age of criminal responsibility at too low an age level, bearing in mind the emotional, mental and intellectual maturity of the child, and, in this respect, refers to the recommendation of the Committee on the Rights of the Child to increase the lower minimum age of criminal responsibility without exception to the age of 12 years as the absolute minimum age, and to continue to increase it to a higher age level;

20. *Also encourages* States to collect relevant information concerning children within their criminal justice systems so as to improve their administration of justice, while being mindful of the children's right to privacy, with full respect for relevant international human rights instruments, and bearing in mind applicable international standards on human rights in the administration of justice;

21. *Stresses* the importance of paying greater attention to the impact of the imprisonment of parents on their children, while noting with interest the day of general discussion on the theme "The situation of children of prisoners", held by the Committee on the Rights of the Child on 30 September 2011, as well as the summary report on the full-day meeting of the Human Rights Council on the rights of the child;[13]

[13] A/HRC/21/31.

22. *Invites* Governments to provide for tailored and interdisciplinary human rights training, including anti-racist, multicultural, gender-sensitive and child rights training to all judges, lawyers, prosecutors, social workers, immigration and police officers and other professionals concerned, including personnel deployed in international field presences;

23. *Encourages* the regional commissions, the specialized agencies, United Nations institutes active in the areas of human rights and crime prevention and criminal justice, and other relevant parts of the United Nations system, as well as intergovernmental and non-governmental organizations, including national professional associations concerned with promoting United Nations standards in this field, and other segments of civil society, including the media, to continue to develop their activities in promoting human rights in the administration of justice;

24. *Invites* States, upon their request, to benefit from technical advice and assistance in juvenile justice provided by the relevant United Nations entities and programmes, in particular the Interagency Panel on Juvenile Justice, in order to strengthen national capacities and infrastructures in the field of the administration of justice, in particular juvenile justice;

25. *Invites* the Human Rights Council and the Commission on Crime Prevention and Criminal Justice, as well as the Office of the United Nations High Commissioner for Human Rights, the Special Representative of the Secretary-General on Violence against Children and the United Nations Office on Drugs and Crime, to continue to closely coordinate their activities relating to the administration of justice;

26. *Invites* the Office of the United Nations High Commissioner for Human Rights and the United Nations Office on Drugs and Crime to reinforce, within their respective mandates, their activities relating to national capacity-building in the field of the administration of justice, in particular in post-conflict situations, and in this context to cooperate with relevant departments of the Secretariat, including the Peacebuilding Support Office, the Department of Political Affairs and the Department of Peacekeeping Operations;

27. *Underlines* the importance of rebuilding and strengthening structures for the administration of justice and of respecting the rule of law and human rights, including in post-conflict situations, as a crucial contribution to building peace and justice and ending impunity, and in this respect requests the Secretary-General to ensure system-wide coordination and coherence of programmes and activities of the relevant parts of the United Nations system, including through the Rule of Law Coordination and Resource Group chaired by the Deputy Secretary-General and supported by the Rule of Law Unit of the Secretariat, and in cooperation with the Peacebuilding Commission, including assistance provided through United Nations field presences;

28. *Invites* States, in the context of the universal periodic review mechanism and in their reports under international human rights treaties, to consider addressing the promotion and protection of human rights in the administration of justice;

29. *Invites* relevant special procedure mandate holders of the Human Rights Council as well as relevant treaty bodies to give special attention to questions relating to the effective protection of human rights in the administration of justice, including juvenile justice, and to provide, wherever appropriate, specific

recommendations in this regard, including proposals for advisory services and technical assistance measures;

30. *Invites* the Commission on Crime Prevention and Criminal Justice to consider developing a set of model strategies and practical measures on the elimination of violence against children in the field of crime prevention and criminal justice in consultation with all Member States and in close collaboration with all relevant United Nations entities, in particular with the Special Representative of the Secretary-General on Violence against Children and the Office of the United Nations High Commissioner for Human Rights;

31. *Requests* the Secretary-General to submit to the General Assembly at its sixty-eighth session and to the Human Rights Council at its twenty-fourth session a report on the latest developments, challenges and good practices in human rights in the administration of justice, analysing the international legal and institutional framework for the protection of all persons deprived of their liberty, as well as the activities undertaken by the United Nations system as a whole;

32. *Decides* to continue its consideration of the question of human rights in the administration of justice at its sixty-ninth session under the item entitled "Promotion and protection of human rights".